S T A T E O F N E W Y O R K

11073--A

I N A S S E M B L Y

May 13, 2010

Introduced by M. of A. TOWNS -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to providing for a tax on paying agent services, fiscal agent services, or any other similar services on debt evading foreign states

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 1101 of the tax law is amended by adding a new subdivision (e) to read as follows:

(E) WHEN USED IN THIS SECTION AND THE TAX IMPOSED UNDER SUBDIVISION (G) OF SECTION ELEVEN HUNDRED FIVE, THE FOLLOWING TERMS SHALL MEAN:

(1) "AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE" MEANS ANY ENTITY:

(I) WHICH IS A SEPARATE LEGAL PERSON, CORPORATE OR OTHERWISE, AND

(II) WHICH IS AN ORGAN OF A FOREIGN STATE OR A PROVINCE OR POLITICAL SUBDIVISION THEREOF, OR A MAJORITY OF WHOSE SHARES OR OTHER OWNERSHIP INTEREST IS OWNED BY A FOREIGN STATE OR A PROVINCE OR POLITICAL SUBDIVISION THEREOF, AND

(III) WHICH IS NEITHER A CITIZEN OF A STATE OF THE UNITED STATES, NOR CREATED UNDER THE LAWS OF ANY THIRD COUNTRY.

(2) "FINAL JUDGMENT" MEANS ANY JUDGMENT THAT IS NO LONGER ELIGIBLE TO BE APPEALED TO ANY COURT.

(3) "FINANCIAL INSTITUTION" MEANS THE FEDERAL RESERVE BANK OF NEW YORK, AND THE OFFICE OR BRANCH IN NEW YORK OF ANY BANK, WHETHER FOREIGN OR DOMESTIC, THAT IS REGULATED BY THE NEW YORK BANKING DEPARTMENT OR ANY AGENCY OR DEPARTMENT OF THE UNITED STATES, OR ANY TRUST COMPANY OR ANY OTHER PROVIDER OF PAYING AGENT SERVICES, FISCAL AGENT SERVICES, OR ANY OTHER SIMILAR SERVICES.

(4) "FOREIGN STATE" MEANS ANY GOVERNMENTAL UNIT OTHER THAN THE UNITED STATES, OR ANY STATE, DISTRICT, COMMONWEALTH, TERRITORY OR INSULAR POSSESSION THEREOF, AND INCLUDES A PROVINCE OR POLITICAL SUBDIVISION OF A FOREIGN STATE.

(5) "DEBT EVADING FOREIGN STATE" MEANS:

(I) ANY FOREIGN STATE THAT:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(A) HAS ONE OR MORE FINAL JUDGMENTS ENTERED AGAINST IT BY ANY STATE OR FEDERAL COURT LOCATED IN NEW YORK, INCLUDING ANY FINAL JUDGMENT ORIGINALLY ISSUED IN A FOREIGN COURT THAT IS FILED OR REGISTERED IN NEW YORK, IN THE COMBINED AMOUNT OF WHICH JUDGMENTS EXCEEDS ONE HUNDRED MILLION DOLLARS;

(B) FAILS TO SATISFY IN FULL ANY SUCH JUDGMENT FOR A PERIOD OF MORE THAN TWO YEARS AFTER THE JUDGMENT BECOMES A FINAL JUDGMENT, REGARDLESS OF WHETHER SUCH JUDGMENT BECAME A FINAL JUDGMENT BEFORE THE DATE OF THE ENACTMENT OF THIS SUBDIVISION; AND

(C) IS NOT A FOREIGN STATE ELIGIBLE FOR:

A. FINANCING THROUGH THE INTERNATIONAL DEVELOPMENT ASSOCIATION, OR

B. DEBT RELIEF UNDER THE ENHANCED HIPC INITIATIVE (AS DEFINED IN SECTION 1625(E)(3) OF THE UNITED STATES INTERNATIONAL FINANCIAL INSTITUTIONS ACT), OR

C. DEBT RELIEF UNDER THE MULTILATERAL DEBT RELIEF INITIATIVE OF THE INTERNATIONAL MONETARY FUND.

(II) FOR PURPOSES OF THIS SECTION, REFERENCES TO A 'DEBT EVADING FOREIGN STATE' SHALL INCLUDE 'AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE' AND 'STATE-OWNED CORPORATION OF A DEBT EVADING FOREIGN STATE,' AS DEFINED IN THIS SUBDIVISION.

(III)(A) THE DEPARTMENT SHALL, ON A MONTHLY BASIS, REVIEW THE RECORDS OF UNSATISFIED JUDGMENTS ENTERED IN ALL FEDERAL AND STATE COURTS LOCATED IN THIS STATE TO IDENTIFY ALL DEBT EVADING FOREIGN STATES.

(B) THE DEPARTMENT SHALL, ON A MONTHLY BASIS, PUBLISH THE IDENTITIES IN ANY MANNER REASONABLY CALCULATED TO GIVE NOTICE TO FINANCIAL INSTITUTIONS IN NEW YORK.

(C) THE DEPARTMENT SHALL REPORT TO THE OFFICE OF THE NEW YORK ATTORNEY GENERAL THE NAMES OF ANY FINANCIAL INSTITUTIONS THAT THE DEPARTMENT DETERMINES ARE NOT COMPLYING WITH THIS SUBDIVISION. THE ATTORNEY GENERAL SHALL TAKE ALL APPROPRIATE INVESTIGATIVE AND ENFORCEMENT ACTIONS NECESSARY TO CAUSE FINANCIAL INSTITUTIONS TO COMPLY WITH THIS SUBDIVISION.

(D) ANY FINANCIAL INSTITUTION THAT THE ATTORNEY GENERAL HAS DETERMINED TO HAVE WILLFULLY FAILED TO COMPLY WITH THIS SUBDIVISION SHALL BE FINED TEN THOUSAND DOLLARS FOR EACH OCCURRENCE.

(E) THE DEPARTMENT AND THE ATTORNEY GENERAL MAY CONSIDER DOCUMENTS AND OTHER INFORMATION RECEIVED FROM THIRD PARTIES, FINANCIAL INSTITUTIONS AND DEBT EVADING FOREIGN STATES.

(F) AT SUCH TIME AS THE DEPARTMENT DETERMINES THAT A DEBT EVADING FOREIGN STATE NO LONGER QUALIFIES AS A DEBT EVADING FOREIGN STATE, IT SHALL REMOVE THE FOREIGN STATE FROM ITS PUBLISHED LIST OF DEBT EVADING FOREIGN STATES.

(6) "STATE-OWNED CORPORATION OF A DEBT EVADING FOREIGN STATE" MEANS ANY CORPORATION OR ENTITY, OTHER THAN A NATURAL PERSON:

(I) THAT IS AN AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE THAT IS A DEBT EVADING FOREIGN STATE, OR

(II) A MAJORITY OF THE SHARES OR OTHER OWNERSHIP INTEREST OF WHICH IS HELD, EITHER DIRECTLY OR INDIRECTLY, BY A DEBT EVADING FOREIGN STATE OR BY AN AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE THAT IS A DEBT EVADING FOREIGN STATE.

(7) "STATE" MEANS EACH OF THE SEVERAL STATES, THE DISTRICT OF COLUMBIA, AND ANY COMMONWEALTH, TERRITORY OR POSSESSION OF THE UNITED STATES.

S 2. Section 1105 of the tax law is amended by adding a new subdivision(g) to read as follows:

(G) THE PROVISION OF A PAYING AGENT SERVICE, A FISCAL AGENT SERVICE OR OF ANY OTHER SIMILAR SERVICE BY A FINANCIAL INSTITUTION TO A DEBT EVADING FOREIGN STATE. THE TAX IMPOSED PURSUANT TO THIS SUBDIVISION IS

IMPOSED ON THE GROSS AMOUNT OF ANY FUNDS DISPERSED BY THE FINANCIAL INSTITUTION IN RELATION TO AND AT THE TIME OF EACH PROVISION OF SUCH SERVICE.

S 3. This act shall take effect immediately.